HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the Case.

W.P.No.249 of 2004
Naresh Thapa & another

Vs

Civil Judge (JD), Dun,
and another.

Approved for reporting

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Not approved for reporting

Date of decision 29.9.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 249 of 2004

Naresh Thapa & another ..... Petitioners

Versus

Civil Judge (JD), Dehradun & another ..... Respondents

Sri Sharad Sharma, Advocate for the petitioner
Sri Ramesh Shah, Advocate for the respondents.

Dated: 29.9.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 22.3.2004 passed by the respondent no.1.

Briefly stated the facts giving rise to the present writ petition are that the plaintiff respondent no.2 instituted a suit No. 15 of 1999 in relation to the property bearing municipal Number 97 B-1/333 seeking relief of eviction of the petitioner defendants form the property mentioned in the plaint. The defendants filed written statements. On 19.7.2001 the respondent no.2 has filed an application under Order 6 Rule 17 C.P.C. for amendment of the plaint. The plaintiff sought the following additional paragraph no. 15-(a) to be added in the plaint:

"The defendants forcibly occupied second adjoining room marked with letters TSGV on map attached to the plaint on 14 Jan, 2002 by braking open the lock of the plaintiff. Inspite of two complaints dated 14 Jan 2002 and 19 Jan 2002 to the SSP Dehradun marked as Annexure 1 and 2 to this application no action was taken by the police"

Under Schedule B the following may kindly be added:

"The defendants forcibly occupied adjoining room marked as TSGV on the map on 14 Jan. 02 during the pendency of suit.

The petitioners filed objection against the application for amendment.

Aforesaid amendment with regard to the forcible possession taken by the defendants over one room of the accommodation already described in the plaint has been sought by the Plaintiff. The suit for eviction and for recovery of possession of the adjoining rooms was pending and during the pendency of the suit the defendants have forcibly occupied one room. Therefore, the plaintiff has no alternative remedy but to amend the paint. The plaintiff having already sought eviction of the defendant from the disputed premises and, it cannot be said that by the proposed amendment the plaintiff wants to change the nature of the proceedings.

Apex Court in the case B.K. Narayan Pillai vs. Parameshwaran Pillai and another (2000) 1 SCC 712 has held as under:

"*The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at nay stage of*

the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

Thus the amendment of the plaint is necessary to avoid multiplicity of litigation. I find no infirmity in the order passed by the Civil Judge (JD) Dehradun permitting the plaintiff to amend the plaint. The writ petition lacks merit and is hereby dismissed. No order as to costs.

(Rajesh Tandon J.)

29.9.2004
*Dhyani